

5 April 1956

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MEMORANDUM FOR [REDACTED]

Subject: 31 U.S.C.A. 215-217 (1952), To Be or Not To Be

1. The question has arisen as to whether 31 U.S.C.A. 215-217 (1952) has been repealed as these sections are stated to have been repealed on page 222 of the Code Annotated (1952 Edition), and on page 204 of the Code itself (1952 Edition). Of particular moment is the issue of whether Section 215 has been repealed as it is this section upon which the Agency will rely in certain statements to be made in a forthcoming regulatory issuance having to do with the administrative settlement of claims against the Agency arising out of damage to privately-owned property in a foreign country and due to the negligence of any officer or employee of the Government acting within the scope of his employment.

2. The section in question was enacted as Public Law 375, 67th Congress, 4th Session (1922). Hereinafter it is referred to as P.L. 375. A copy is appended marked TAB A. Generally speaking, P.L. 375 authorizes the administrative settlement of claims of \$1,000.00 or less occasioned by damage caused to personal property by the negligence of a federal officer or employee acting within the scope of his employment. Of significance in the context of whether or not it has been repealed en toto is the fact that it contains no restriction against its application to claims arising in foreign countries.

3. In 1946, the Federal Tort Claims Act of 1946 was enacted (60 Stat. 243, 28 U.S.C. 2671 (1952)). Section 403(a) of Part 2 of this statute (copy appended marked TAB B) generally authorized the administrative settlement of claims of \$1,000.00 or less on account of injury or loss of property, or personal injury or death, caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment under certain circumstances. Section 421(k) of the statute rendered its provisions, including Section 403, inapplicable to any claim arising in any foreign country. While there are several other restrictions on the applicability of the statute listed in Section 421, the one just mentioned is the one most germane to the question under consideration.

4. Also, Section 424 of the Tort Claims Act, in relevant part, read as follows:

"Section 424 (a)

"All provisions of law authorizing any Federal agency to consider, ascertain, adjust, or determine claims on account of damage to or

loss of property, or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, are hereby repealed in respect of claims cognizable under part 2 of this title and accruing on and after January 1, 1945, including, but without limitation, the provisions granting such authorization now contained in the following laws: Public Law Numbered 375, 67th Congress, approved December 28, 1922 (42 Stat. 1066; USC Title 31, Secs. 215-217).

"Section 424 (b)

"Nothing contained herein shall be deemed to repeal any provision of law authorizing any Federal agency to consider, ascertain, adjust, settle, determine, or pay any claim on account of damage to or loss of property or on account of personal injury or death, in cases in which such damage, loss, injury, or death was not caused by any negligent or wrongful act or omission of an employee of the Government while acting within the scope of his office or employment, or any other claim not cognizable under part 2 of this title." (Emphasis Supplied)

5. You will observe that this language is not unqualified "repealer" language. The argument that it did not operate to repeal P.L. 375 en toto stems from the phraseology underlined above, i.e., " . . . in respect of claims cognizable under Part 2 of this Title" (Section 424(a)); " . . . the provisions granting such authorization now contained in the following laws . . ." (Section 424(a)); and " . . . or any other claim not cognizable under Part 2 of this Title." (Section 424(b)) In brief, this argument is that the cited qualificatory language in the repealer section served to keep P.L. 375 on the books as regards claims arising in foreign countries. More specifically it is this. Public Law 375 applied to claims arising in foreign countries because (a) its language contained no restrictions as to the place or places of its application, and (b) it has been applied to claims arising in foreign countries by various government departments (e.g., State and Treasury) since the date of its enactment and with Congressional sanction. The application of Section 403 of Part 2 of the successor Tort Claims Act was restricted to claims not arising in foreign countries by Section 421(k) of that Act. The repealer section of the Tort Claims Act repealed only those provisions of law dealing with claims cognizable under Part 2 of that Act. Since claims arising in foreign countries are not cognizable under Part 2, then only so much of P.L. 375 as dealt with claims arising not in foreign countries was repealed. Or, to turn it around, insofar as P.L. 375 dealt with claims arising in foreign countries, it was not repealed.

6. Considering the language involved, this argument has some merit. A poll among certain other federal agencies revealed it to be the informal opinion of Treasury (Mr. McNeil, Assistant General Counsel) and State (Mr. Cameron, Legal Advisor's Office) that P.L. 375 had not been repealed as regards claims arising in foreign countries; and that of Justice (Mr. Phillips) and USIA (Mr. Heur, Assistant General Counsel) that P.L. 375 had been repealed en toto.

7. I am informed by members of the Subcommittee on the Codification of the Laws of the United States of the House Committee on the Judiciary that they consider P.L. 375 to have been repealed en toto by Section 424(a) of the Tort Claims Act. At the same time, these gentlemen admit some room for argument and suggest either (a) a request for an opinion from the Attorney General, or (b) a case in court, should we be doubtful on the point. I add that Title 31 has not been enacted into positive law.

8. Various arguments pro and con could be, have been, advanced as to whether P.L. 375 has, in fact, been repealed, but I feel that these lead to no conclusion other than that, to coin a phrase, the law is not clear. This leads to the practical, and really significant, consideration of whether we wish to rely on P.L. 375 in the forthcoming Tort Claims Regulation. In view of the obvious conflict within the federal community as to the status of the law, our best alternatives are either to seek a clarifying opinion from the Attorney General or the Comptroller General, or to seek our own legislation on the matter. Were it to be held by either the Attorney General or the Comptroller General that P.L. 375 had not been repealed as regards claims arising in foreign countries, and we were not to seek our own legislation, our authority would be limited to claims of \$1000 or less arising out of damages to personal property only. Were we to get specific legislation, similar to that of the various armed services on this matter (see 31 U.S.C.A. 222-223 (1952)), probably we could obtain a broader authority than that of P.L. 375. Of the two approaches, I suggest the legislation. A third alternative, and probably one to be applied on an interim basis, would be to rely on P.L. 375 so far as it goes. We would not be alone in so doing, and certainly there is a color of justification for such reliance.

9. In view of the doubtful status of P.L. 375 and of its comparatively limited coverage vis-a-vis other statutes on the general subject, I recommend the legislation. If I may be of any further assistance to you in this matter, please call on me.

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- 3 -

TAB A

Chap. 17 - An Act To provide a method for the settlement of claims arising against the Government of the United States in sums not exceeding \$1,000 in any one case.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That when used in this Act the terms "department and establishment" and "department or establishment" mean any executive department or other independent establishment of the Government; the word "employee" shall include enlisted men in the Army, Navy, and Marine Corps.

Sec. 2. That authority is hereby conferred upon the head of each department and establishment acting on behalf of the Government of the United States to consider, ascertain, adjust, and determine any claim accruing after April 6, 1917, on account of damages to or loss of privately owned property where the amount of the claim does not exceed \$1,000, caused by the negligence of any officer or employee of the Government acting within the scope of his employment. Such amount as may be found to be due to any claimant shall be certified to Congress as a legal claim for payment out of appropriations that may be made by Congress therefor, together with a brief statement of the character of each claim, the amount claimed, and the amount allowed: PROVIDED, That no claim shall be considered by a department or other independent establishment unless presented to it within one year from the date of the accrual of said claim.

Sec. 3. That acceptance by any claimant of the amount determined under the provisions of this Act shall be deemed to be in full settlement of such claim against the Government of the United States.

Sec. 4. That any and all Acts in conflict with the provisions of this Act are hereby repealed.

APPROVED, December 23, 1922.

TAB 13

PART 2--ADMINISTRATIVE ADJUSTMENT OF TORT CLAIMS
AGAINST THE UNITED STATES

Claims of \$1,000 or Less

Sec. 403(a) Subject to the limitations of this title, authority is hereby conferred upon the head of each Federal agency, or his designee for the purpose, acting on behalf of the United States, to consider, ascertain, adjust, determine, and settle any claim against the United States for money only, accruing on and after January 1, 1945, on account of damage to or loss of property or on account of personal injury or death, where the total amount of the claim does not exceed \$1,000, caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death, in accordance with the law of the place where the act or omission occurred.